

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

AJIT JADHAV,
27358 Bridle Place
Chantilly, VA 20152

Plaintiff,

V.

NATIONAL INSTITUTES OF HEALTH,
9000 Rockville Pike
Bethesda, Maryland 20892

Defendant.

Civil Action No. _____

COMPLAINT

This action is brought pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the defendant, National Institutes of Health (NIH), to produce records responsive to a FOIA request for records.

JURISDICTION AND VENUE

1. This Court has both subject matter jurisdiction and personal jurisdiction over the defendant pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

2. Plaintiff Ajit Jadhav (Jadhav) is a United States citizen and a resident of the Commonwealth of Virginia. Since 2004, Jadhav has worked as a scientist at NIH. From early 2009 to December 2016, Jadhav was the Branch Chief of the Chemical Genomics Center

(NCGC) and Director of Informatics in the Division of Pre-Clinical Innovation (DPI), both now part of NIH's National Center for Advancing Translational Sciences (NCATS).

3. Defendant NIH is a component of the U.S. Department of Health and Human Services (HHS) and is an agency within the meaning of 5 U.S.C. § 552(f)(1). NIH has possession of and control over the records that Jadhav seeks.

4. NIH maintains an agency-wide FOIA office, and each of NIH's 27 separate Institutes and Centers—including NCATS—has its own FOIA Coordinator.

FACTUAL BACKGROUND

5. On May 17, 2019, Plaintiff Jadhav, through his undersigned counsel, submitted a FOIA request to NIH for certain records related to activities at NCATS, particularly concerning reports that allegedly implicated Jadhav's leadership at NCGC and DPI, and communications within NCATS and NIH about Jadhav. Specifically, the request sought the following documents:

- 1) Division of Program Integrity (DPI), Office of Management Assessment (OMA), Office of the Director (OD) review of Ajit Jadhav's acquisitions and procurement related activities ("DPI-OMA Investigation").
- 2) Golden Key Group investigation into Ajit Jadhav conducted by Latif Doman ("Golden Key Group Investigation").
- 3) NCATS Chemical Genomics Center (NCGC) assessment conducted by Yvonne Du Buy and Carol Lowe ("NCATS Assessment").
- 4) Drafts of, working papers, and documents reviewed in conjunction with: the DPI-OMA Investigation; the Golden Key Group Investigation; and the NCGC Assessment.
- 5) Internal NIH emails and other communications regarding: the DPI-OMA Investigation; the Golden Key Group Investigation; and the NCGC Assessment.
- 6) Any complaints regarding the working environment at NCATS, including all allegations of a hostile work environment within NCATS and/or within NCGC, for the period January 1, 2014 to present.

- 7) The entire contents of Ajit Jadhav's personnel file, including work plans, performance reviews, performance plans, disciplinary actions, SF-50s, salary adjustments, bonuses, commendations or awards, position descriptions, documents related to reorganizations or reassignments, and any documents related to opportunities for salary or paygrade increases.
- 8) Documentation of all prior disciplinary actions, including penalties, against any NCATS employees, including NCGC employees, for the period January 1, 2014 to present.
- 9) Documentation of NCATS's Title 42 renewal process and policies, including documentation of the renewal or nonrenewal of Title 42 staff and reasons for renewal or nonrenewal.
- 10) Any communications between the NIH Civil Division and NCATS, including NCGC, regarding Ajit Jadhav.
- 11) All emails and other communications that relate or refer to Ajit Jadhav between and among any of the following:
 - a. Chris Austin;
 - b. Matthew Boxer;
 - c. Julie Broussard Berko;
 - d. Kyle Brimacombe;
 - e. Thomas Chiarizia;
 - f. Elaine Collier;
 - g. Francis Collins;
 - h. Madeha Dastgir;
 - i. James Dickens;
 - j. Latif Doman;
 - k. Yvonne DuBuy;
 - l. Matthew Hall;
 - m. Ann Knebel;
 - n. Keith Lamirande;
 - o. Carol Lowe;
 - p. Dave Maloney;
 - q. Juan Marugan;
 - r. Barbara McGarey;
 - s. Pamela McInnes;
 - t. Sam Michael;
 - u. Kathleen Moore;
 - v. Heather Ramiah;
 - w. Anton Simeonov; and
 - x. Noel Southall.

6. Jadhav's FOIA request was addressed to both Mr. Gorka Garcia-Malene, the NIH FOIA Officer, and to Ms. Marianne Manheim, the NCATS FOIA Coordinator. The request was sent by electronic mail on May 17, 2019.

7. On May 17, 2019, NIH sent a written acknowledgement of Jadhav's request and assigned it FOIA Case Number 51093.

8. On or about June 11, 2019, the NCATS FOIA Coordinator contacted Jadhav's attorney about questions she had regarding the scope of the requests. Counsel promptly called the NCATS FOIA Coordinator and answered those questions.

9. Jadhav has not received any other written communications or notifications from NIH generally or NCATS specifically in the 95-plus days since submitting his request.

10. On August 20, 2019, Jadhav's attorney called the NCATS FOIA Coordinator to inquire about the status of his request. The NCATS FOIA Coordinator reported some responsive records had been sent to the NIH FOIA Office, Office of the Director (FOIA OD) for review and referred counsel to the FOIA OD for further information.

11. Counsel then called the FOIA OD to seek further information about the status of Jadhav's request. The representative orally reported that:

- a) NCATS, the Office of Management Assessment (OMA), and the Office of Human Resources (HR) were asked to search for and provide responses to Jadhav's request.
- b) As of August 20, 2019, it appears that HR has responded, and that NCATS is engaging in internal deliberations and has not yet provided records to the NIH FOIA Office.

- c) The NIH FOIA Office received approximately 86 pages of records from Human Resources on or about May 30, 2019. Those documents were placed in a queue for review by the NIH FOIA office.
- d) The NIH FOIA office representative could not provide an estimate of when it was likely to begin its review of the requested records, nor when they might be produced.

12. More than 20 working days have passed since NIH received Jadhav's FOIA request, and NIH has not made a determination on the substance of the FOIA request, nor has it produced any records in response to the request.

13. NIH also has failed to send notice pursuant to 45 C.F.R. § 5.24(f) of any unusual circumstances requiring an extension of the usual 20-day statutory period for responding under 5 U.S.C. § 552(a)(6)(A)(i).

14. Accordingly, Jadhav has exhausted all administrative remedies with respect to his FOIA request, FOIA Case Number 51093.

15. NIH has wrongfully withheld the requested records from Jadhav.

COUNT I

16. Jadhav adopts and incorporates by reference Paragraphs 1-15.

17. NIH has unlawfully failed to comply with the statutory and regulatory requirements that govern compliance with FOIA requests.

18. There is no legal basis for NIH's failure to disclose the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ajit Jadhav respectfully requests that this Court:

A. Declare that NIH's failure to disclose the requested records is unlawful;

- B. Order NIH to disclose the requested records in their entireties and make copies available to Jadhav without further delay and by a date certain established by the Court;
- C. Provide for expeditious proceedings in this action pursuant to 28 U.S.C. § 1657(a);
- D. Award Plaintiff his costs and reasonable attorney's fees incurred in this action; and
- E. Grant such other and further relief as this Court may deem just and proper.

Dated: August 22, 2019

Respectfully submitted,

/s/ William Zapf

William Zapf (Bar No. 28686)

Jennifer A. Short (*pro hac vice* to be sought)

Sarah R. Fink (*pro hac vice* to be sought)

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